IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4660 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NAJABHAI N LAVADIYA

Versus

DISTRICT PRIMARY EDUCATION OFFICER

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Appearance:

MR KB PUJARA for the Petitioner
MR AJ SHASTRI for Respondent No. 1
Respondent No. 2 served

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 01/02/2003

ORAL JUDGEMENT

The petitioner herein is a primary school teacher

appointed under the respondent no.1 - District Primary Education Officer, Rajkot. The petitioner claims to be the General Secretary of the Rajkot District Primary Teachers' Association. The present petition has been preferred by the petitioner to espouse the cause of the primary school teachers of the District Primary Education Committee who have been ordered to be treated as on deputation under the Sarvodaya Project.

On 19th October, 1993, the State Government passed a resolution to restart the Sarvodaya Project and to entrust the management of some primary schools under such Project.

As to the teachers in such primary schools, it was resolved that they should be treated as on deputation under the Sarvodaya Project and that their pay, seniority, pension and other service benefits shall be protected. Pursuant to the said Resolution, under Government order dated 11th August, 1994, some 25 primary schools were entrusted to the concerned Sarvodaya Project. Consequently, under the impugned order dated 28th May, 1995 made by the District Primary Education Officer, the management of the said 25 schools have been transferred to the Sarvodaya Project and the teachers serving in the said schools have been treated to be on deputation under the said Project. Feeling aggrieved, the petitioner has preferred the present petition.

Be it noted that, the petition has been preferred by a singular petitioner to espouse the cause of primary school teachers. Names and identity of such teachers have not been disclosed. The petition in a representative capacity in the present nature is not maintainable. The petition is, therefore, treated to be one preferred by the present petitioner alone. Any relief granted in this petition, therefore, shall be in favour of the petitioner alone. Such relief shall not bind the respondent Authorities as against other primary school teachers in general. The grievance of the petitioner is against the transfer of his service to a private management by deputation without his consent. The law in respect of deputation is well settled. Service of an employee can not be transferred from under one employer to the other without the express or implied consent of such servant. In the present case, the petitioner who is in public employment namely, the District Primary Education Committee is sought to be transferred on deputation under a private management i.e. the Sarvodaya Project. Such transfer can not be effected unless the petitioner specifically consents to such

transfer. In the present case, the options were invited from the petitioner and such others. Petitioner had opted to continue to be in the service of the District Primary Education Committee. Thus, his transfer on deputation to the Sarvodaya Project has been ordered against his wishes. Such transfer is not permissible.

Hence, the petition is allowed with costs. The impugned order of transfer of primary school teachers under the respondent no.1 to the Sarvodaya Project in so far as it concerns the petitioner herein, is quashed and set aside. Rule is made absolute accordingly.

( Ms. R.M. Doshit, J. )

/sakkaf